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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,886	03/09/2004	Herbert C. Preul	PREUL-02A	2886
26875	7590	10/04/2005		
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER RIVELL, JOHN A	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/796,886

Applicant(s)

PREUL, HERBERT C.

Examiner

John Rivell

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 8/24/05 (amendment).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Applicant's arguments filed August 24, 2015 have been fully considered but they are not persuasive.

Claims 1-9 remain pending.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 and 7-9 are rejected under 35 U.S.C. §102 (b) as being anticipated by Higgins (U.S. Pat. No. 403,106).

The patent to Higgins ('106) discloses a "wastewater source control system for reducing entry of wastewater with sanitary sewage from (an inherent) running trap (in either of drain pipes d) of a building drain to (an inherent) sewer main (in the street) in response to a high flow in the sewer main, the wastewater source control system comprising: a sewer service line (read at line f and tank B and either drain pipe d) having an upstream end connected to the building drain (at either drain pipe d) and a downstream end connected to the (inherent) sewer main (in the street), the sewer service line (f, B and d) conducting a flow of wastewater with sanitary sewage from the building drain (either pipe d) to the sewer main (in the street); a flow control device (valve I) installed in the sewer service line (f, B and d), the flow control device (I) automatically closing in response to a backflow of wastewater and/or stormwater from the (inherent) sewer main (in the street), through the sewer service line (f and B) and toward the building drain (either pipe d), and the flow control device (valve I)

Art Unit: 3753

automatically opening in response to a normal flow of wastewater from the building (from either pipe d), through the sewer service line (f) and into the sewer main (in the street); a detention tank (tank A) disposed in the sewer service line upstream of the flow control device (valve l) and downstream of the (inherent) running trap (in the upstream portions of either drain pipe d), the detention tank (A) detaining the wastewater with sanitary sewage from the building rain (either pipe d) in response to the flow control device (l) being closed and the wastewater with sanitary sewage draining from the detention tank (A) upon the flow control device (l) subsequently opening” as recited.

Regarding claim 4, in Higgins (“106), “the detention tank (A) is disposed near an upstream end of the sewer service line (f)” as recited.

Regarding claim 6, in Higgins (‘106), “the detention tank (A) and flow control device (valve l) are disposed near an upstream end of the sewer service line” as recited because, as recited in claim 7, “the detention tank (A) and flow control device (valve l) are located inside a perimeter of the building” as shown by foundation wall D

Regarding claims 8 and 9, in using the device of Higgins (‘106) one necessarily performs a “method of reducing entry of wastewater with sanitary sewage from (an inherent) running trap (in either of drain pipes d) of a building drain into (an inherent) sewer main (in the street) in response to a high flow in the sewer main, the method comprising: providing a sewer service line (pipe f, tank A and either of drain pipes d) having an upstream end connected to the building drain (either pipe d) and a downstream end (inherently) connected to the (inherent) sewer main (in the street), the sewer service line conducting wastewater with sanitary sewage from the building drain

Art Unit: 3753

(either pipe d) to the (inherent) sewer main (in the street); providing a flow control device (valve l) connected in the sewer service line and a detention tank (A) connected in the sewer service line upstream of the flow control device (l) and downstream of the rung trap (in either pipe d); automatically closing the flow control device (l) in response to a backflow of stormwater from the sewer main (in the street), through the sewer service line (at f) and up to the flow control device (l); and detaining the wastewater with sanitary sewage from the building drain (either pipe d) in the detention tank (A) while the flow control device (l) is closed” as recited.

Regarding claim 9, in using the device of Higgins ('106), one necessarily further performs a method “further comprising: automatically opening the flow control device (l) in response to a flow of stormwater away from the flow control device (l toward the street); and automatically draining the wastewater with sanitary sewage detained in the detention tank (A) in response to the flow control device (l) being open” as recited.

Regarding applicants remarks concerning the above, the argument that:

“...Higgins may operate effectively as a running trap, the Higgins trap B cannot prevent a flow of wastewater with sanitary sewage from the water-closet from entering the pipe f and flowing into the sewer during a stormwater or wastewater backflow condition”

is correct to the extent the reference is read on the claim as interpreted by applicant. As interpreted by the Examiner however, the device of Higgins ('106) clearly can prevent the flow of wastewater with sanitary sewage from entering pipes d in that, backflow from the sewer main in the street presses the valve l closed. During this condition, wastewater from drain pipes d is retained within tank A so long as the pressure differential across valve l maintains valve l in the closed position. The flow

Art Unit: 3753

control device that applicant argues is missing from Higgins ('106) is shown at valve I. The detention tank that retains wastewater when the valve I is closed is shown at tank A. In the event of a high flow condition in the sewer main in the street causing backflow of sewage into pipe f, the weight of fluid within tank B against valve I retains valve closed thus causing any wastewater from drain pipes d to be retained within tank A. Once the condition in the sewer main in the street subsides, wastewater flows from tank B to pipe f, there is no longer any wastewater in tank B to hold valve I closed, and wastewater from tank A can flow through the valve I, tank B pipe F and onto the sewer main in the street.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins ('106).

The patent to Higgins ('106) discloses all the claimed features with the exception of having the "flow control device disposed near a downstream end of the sewer service line (claim 2) nor the "detention tank disposed near a downstream end of the sewer service line (claim 3).

a. It would have been obvious to one having ordinary skill in the art at the time the invention was made to physically relocate the valve element I and/or detention tank A to any physical location in the sewer service line of the building feeding the sewer main in the street , since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ

70. Here, relative to the physical location of the equivalent parts in Higgins ('106), the claims merely require a different physical location yet mechanically connected to the same drainage line from the building.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins ('106) in view of Smith.

The patent to Higgins ('106) discloses all the claimed features with the exception of having "a service box" with the flow control device at valve I located therein.

The patent to Smith discloses that it is known in the art to employ at a "service box" A including a hinged top cover h, a valve device F located therein preventing backflow of sewerage liquid from the sewer main in the street to the service line of the building for the purpose of containing the valve in a serviceable location for cleaning and/or repair.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Higgins ('106) a "service box" encasing the valve element I therein for the purpose of containing the valve in a serviceable location for cleaning and/or repair as recognized by Smith.

Applicants remaining arguments merely rely on the dependence from an "allowable claim 1" for patentability. As demonstrated above, it is believed that the claims are properly rejected under 35 USC 103.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

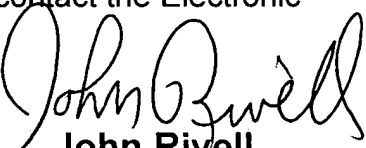
Art Unit: 3753

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (571) 272-4918. The examiner can normally be reached on Mon.-Thur. from 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (571) 272-4930. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**John Rivell**  
**Primary Examiner**  
**Art Unit 3753**

j.r.